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IN THE

Supreme Court of the United States

October Term, 1962
No. 19

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the United States District Court for the Northern District of California, Southern Division.

Amicus Curiae Brief in Support of Appellants' Brief of Protected Milk Producers Association of Paramount, California, Central Milk Sales Agency of Artesia, California, Harmony Valley Creamery Association of San Luis Obispo, California, San Diego Milk Association of San Diego, California, and San Diego County Milk Producers Council of San Diego, California.

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Brief Filed With Consent of Parties.

All parties to this case have consented to the filing of this brief. Their written consents are filed concurrently herewith.

Interest of Amici Curiae.

Protected Milk Producers Association of Paramount, California, Central Milk Sales Agency of Artesia, California, Harmony Valley Creamery Association of San Luis Obispo, California, and San Diego Milk Association of San Diego, California, are all non-profit cooperative marketing associations formed under the provisions of Chapter 4, Division VI of the Agricultural Code of the State of California; San Diego County Milk Producers Council is a nonprofit corporation formed under the general corporate laws of the State of California. The said organizations represent and are composed of 200 independent milk producers who own and operate a substantial majority of the dairy farms in Central and Southern California, and together said dairy farmers produce annually in excess of 85 million gallons of fluid milk. This milk is sold and distributed by the major milk processors and distributors doing business in the State. A substantial portion of the milk produced by these dairy farmers was previously sold and delivered to armed services bases, camps and establishments similar to those involved in this case and including some of them.

In the event the officials of the State of California are permanently enjoined herein from enforcing the provisions of the California Milk Stabilization Act, these milk producers will be deprived of a most substantial market outlet for their milk, with consequent serious and crippling financial losses to them.

The demoralizing effect of the judgments of the lower court upon the hitherto orderly production, distribution and sale of milk in this State (resulting from an eminently fair and impartial administration of its milk stabilization and control laws), cannot be over-emphasized. The wholesale distributors of milk are the "right arm" of the milk industry, and unless they are additionally controlled by being compelled to demand and receive prescribed minimum wholesale prices for milk, they cannot adequately and efficiently perform their own duties under the law. Unless law-abiding distributors are equally protected with the producers of milk, they will not be able to pay the prescribed minimum prices to the dairy farmers. This chaotic condition can lead only to violations and evasions of Federal and State laws and regulations.

Since, as shall be demonstrated later in this brief, the established *public policy* of the Federal and State governments relative to the production, distribution and sale of milk is the same, the undermining of the State's public policy can only lead to the defeat and undoing of the public policy of both governments.

This brief is being filed in a sincere attempt to prevent the evils which will follow any affirmance of the lower court's judgments and which the milk stabilization and control laws (both Federal and State) were designed to prevent and eliminate.

Summary of Argument.

Appellee, the Government of the United States, should be the first* to compel its agencies to cooperate with all other interested parties, by their requiring compliance by milk distributors with all Federal and State milk stabilization and control laws and regulations, which have been enacted and promulgated as a matter of public policy for the protection of dairy farmers and legitimate milk distributors, and ultimately for the preservation of the health and welfare of milk consumers, including our armed forces.

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*In *Goldman*, "The Words of Justice Brandeis" (p. 88), the following apt quotation appears:

"GOVERNMENT AS LAWBREAKER

"Decency, security, and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of law, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

Ordinarily, one who aids, abets and encourages the commission of an unlawful act, is equally guilty with the lawbreaker. The State, of course, cannot but the Federal Government should prevent its agencies from aiding and encouraging milk distributors to violate State stabilization and control laws and regulations.

ARGUMENT.

I.

As Interpreted and Explained by This Court, Both the United States of America and the State of California Have Established by Statute a Like Public Policy With Respect to the Production, Distribution and Sale of Milk.

Section 204(2) of the Agricultural Act of 1954, 68 Stat. 899, provides:

> "It is the policy of Congress to assure a stabilized annual production of adequate supplies of milk and dairy products; to promote the increased use of these essential foods; to improve the domestic source of supply of milk and butter fat by encouraging dairy farmers to develop efficient production units, consisting of high-grade, disease-free cattle and modern sanitary equipment; and to stabilize the economy of dairy farmers at a level which will provide a fair return for their labor and investment when compared with the cost of things that farmers buy."*

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*The *Agricultural Marketing Agreement Act of 1937* had previously re-enacted and amended certain provisions of the Agricultural Adjustment Act (Act of May 12, 1933, 48 Stat. 31, as amended Aug. 24, 1935, 49 Stat. 750, 7 U. S. C. A. Section No. 601 *et seq.*). By Section 1, 7 U. S. C. A. No. 601, it is declared that "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers" thus destroying the value of agricultural assets to the detriment of the national public interest. This interference is declared to "burden and obstruct the normal channels of interstate commerce."

By Section 2, it is declared to be the *policy of Congress*, through the exercise of the powers conferred upon the Secretary

This Court in at least two decisions has spelled out the serious problems which confront the dairy farmers and distributors of milk. The necessity for an efficacious solution of these problems was the underlying cause for the enactment of analogous statutes by the Federal and State governments. One of the two cases referred to, upheld the constitutionality of the Federal Agricultural Marketing Agreement Act of 1937 and a certain marketing order issued thereunder, whereas the other case upheld the constitutionality of the New York statute having similar objectives.

In the former case (*United States v. Rock Royal Co-Op*, 307 U. S. 533, 548, 59 S. Ct. 1001) this Court after stating that ". . . the Secretary of Agriculture, before promulgating Order No. 27, conducted public hearings attended by handlers, producers and consumers of milk and their representatives throughout the milk-shed," commented on the fact that *the hearings were jointly held by the Federal and State governments and added:*

> "The cooperation of the two governments was the culmination of a course of investigation and legislation which had continued over many years. The problem from the standpoint of New York was fully considered and the results set out in the Report of 1933 of the Joint Legislative Committee to Investigate the Milk Industry."

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of Agriculture, "to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. * * *"

In the other case (*Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469), where the constitutionality of the New York statute was upheld, the Court referred to the same historical background as was mentioned in the former case.

A reading and comparison of the pertinent language in the two decisions will immediately demonstrate that the "reason for the rule" was the same in each case. For convenience we have set forth in Appendix A the relevant portions of both opinions.

From the language quoted in Appendix A, it is obvious that both the Federal government and the State of New York were in complete agreement that "milk is an essential item of diet", that it "is highly perishable" and "cannot long be stored," that it is "a fertile field" and "an excellent medium for the growth of bacteria," that "it is most desirable to have adequate production under close sanitary supervision to meet the constantly varying needs" and that the above "facts necessitate safeguards in its production and handling for human consumption which greatly increase the cost of the business", that "only farms with equipment approved by the health authorities of the marketing area and operated in accordance with their requirements are permitted to market their milk" and "failure of producers to receive a reasonable return for their labor and investment over an extended period threaten a relaxation of vigilance against contamination," that "cut-throat competition" among producers "would threaten the quality and in the end the quantity of fluid milk deemed suitable for" consumption and among the causes of low cost milk is "the prevalence of unfair and destructive trade practices

in the distribution of milk, leading to a demoralization of prices," and that "the fluid milk industry is affected by factors of instability peculiar to itself which call for special methods of control."

That both the Federal government and the State of California have the same public policy relative to the production, distribution and sale of milk conclusively appears from a comparison of the pertinent language of the California Act with what has been said above. Sections 4200 to 4203 inclusive of the California Milk Stabilization Act (California Agricultural Code, Division 6, Chapter 17) provide as follows:

> "4200. The production and distribution of fluid milk and of fluid cream and the dissemination of accurate scientific information as to the importance of milk and other dairy products in the maintenance of a high level of public health, is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of public powers of this State for the purpose of protecting the health and welfare of the people of this State.
>
> 4201. It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination is vital to the public health and welfare, and that the production, transportation, processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry af-

fecting the public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have been carried on and are now being carried on in the production, marketing, sale, processing or distribution of fluid milk and fluid cream, which constitute a constant menace to the health and welfare of the inhabitants of this State and tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair the future supply of fluid milk, and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity; that it is the policy of this State to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers.

4202. It is recognized by the Legislature that conditions within the milk industry of this State are such that it is necessary to establish marketing areas wherein different prices and regulations are necessary, and for that purpose the Director of Agriculture of this State shall have the administrative authority, with such additional duties as are hereinprescribed, after investigation and public hearings to prescribe such marketing areas and modify the same when advisable or necessary.

4203. The foregoing statements in this article of facts, policy and application of this chapter are hereby declared a matter of legislative determination."

Not only is the public policy of California similar to that of the Federal government but there is absolutely no conflict in any respect. Both policies have for their ultimate objective the preservation and protection of the health and welfare of the population.

II.

The Similarity of the Public Policy Enactments of Both the Federal and State Governments With Reference to the Production, Distribution and Sale of Milk, Undoubtedly Constrained Appellee to Abandon Its Position With Regard to the Minimum Price Required to Be Paid to Producers Under the California Act.

It should be borne in mind that the discriminatory price-cutting practices contended for by appellee, are not countenanced by any Federal *statute directly* mentioning or affecting the production, distribution or sale of "milk". The governmental immunity from state minimum price requirements claimed for certain geographically fortunate agencies of appellees, is at best based upon purported *implications* arising from *general* procurement statutes and regulations of such agencies.

Had Congress seen fit to disrupt the efficient functioning and operation of state milk control agencies and boards, and the orderly enforcement of state statutes, it would and properly should have placed the necessary language, creating such a valuable "immunity" right and privilege, in a *statute* dealing directly with the sub-

ject of "milk". The following language of the decision in *Penn Dairies v. Milk Control Commission*, 318 U. S. 261, 275, 63 S. Ct. 617, 623, is to the same effect:

> "An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be implied where the legislative command, read in the light of its history, remains ambiguous. Considerations which lead us not to favor repeal of statutes by implication, *United States v. Borden*, U. S. 188, 198, 199, 60 S. Ct. 182, 188, 84 L. Ed. 181; *United States v. Jackson*, 302 U. S. 628, 631, 58 S. Ct. 390, 392, 82 L. Ed. 488; *Posadas v. National City Bank*, 296 U. S. 497, 503, 505, 56 S. Ct. 349, 352, 353, 80 L. Ed. 351, should be at least as persuasive when the question is one of the nullification of state power by Congressional legislation."

When the matter first came to the attention of the Solicitor General, he undoubtedly recognized immediately that any *conflict* between the implications claimed to arise from any general procurement statute or regulation on the one hand, and the state statute on the other, was fatal to the contentions of appellee.

If there exists a conflict between the implications drawn from a general (Federal) procurement statute or regulation and the California public policy requirements of its statute, then *ipso facto* the same conflict exists between the former and established Federal public policy with reference to the production, distribution and sale of milk.

This argument is equally applicable to the California requirements fixing minimum wholesale prices to be paid

to distributors. In none of the Federal or State court decisions relating to the milk industry, has it ever been held or even intimated that the *production* and *distribution* of milk are distinct and divisible operations, which are not mutually dependent. The contrary is proved by the fact that the abuses in *distribution* (*e.g.*, cut-throat price-cutting) were the direct and motivating causes for the fixing of minimum prices for the *production* of milk. The two are "physically and inextricably intermingled" and constitute a single body, neither half of which can survive without the other.

III.

The Constitutional Right of a State to Fix Minimum Prices to Be Charged by Distributors of Milk, Can No Longer Be Questioned.

In *Nebbia v. New York*, (*supra*), this Court held that the pertinent New York statute was constitutional. There, the New York Milk Control Board had "fixed nine cents as the price to be charged by a store for a quart of milk. Nebbia, the proprietor of a grocery store in Rochester, sold two quarts and a 5-cent loaf of bread for 18 cents and was convicted for violating the board's order." His conviction was affirmed by this Court.

After stating that the question for decision was whether the Federal Constitution prohibited such state legislation, the Court explained in considerable detail the searching inquiry made by the 1933 New York Joint Legislative Committee, whose conclusions are set forth in Appendix A.

timately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public."

The forceful and compelling argument of this Court in the *Nebbia* case upholding the right of a state in a matter of public policy to protect its citizens, has never been challenged.

Nowhere in the opinion is there any slightest indication that the application of the decision would depend entirely upon the geographical whereabouts (*i.e.* whether without or within some favored government land) of the consumer or consumers of the milk sold. In the absence of statutory enactments to the same effect, public policy mandates of a state statute should not be nullified to favor only a comparatively few of the nation's millions of inhabitants.

IV.

This Court, by Reversing the Judgments of the Lower Court in Their Entirety, Will Stand Squarely Behind the Legislative and Executive Branches of the Federal Government and the State of California (as Well as Other States) in Their Efforts to Prevent and Eliminate Serious and Dangerous Abuses in the Milk Industry.

The necessity for full and complete cooperation between the United States of America and each state having a statute similar to that of the State of California, in the matter of enforcing the statutes and regulations of both pertaining to the production, distribution and sale of milk, cannot be overestimated. The Federal government operates, by virtue of its interstate powers, primarily in the field of *distribution*. In this field in many instances the United States is absolutely dependent upon aid from the state governments, for the reason that the latter are initially concerned with the *production* of milk. In *United States v. Rock Royal Co-Op (supra)*, the original proceedings instituted by the United States of America "had sought relief not only for violations of the Order of the Secretary of Agriculture but also, if the Court should find that the defendants or any of them were not subject to that Order, for violation of Official Order No. 126 issued by the Commissioner of Agriculture and Markets of the State of New York." In explanation this Court stated that "the two Orders are in pari materia, one covering milk moving in or directly burdening, obstructing or affecting

interstate commerce and the other covering milk in intrastate commerce." Later in the opinion the Court mentioned that the Secretary of Agriculture of the United States of America had found that the two were "physically and inextricably intermingled."*

Since, as we have demonstrated, the milk statute of California is not "inconsistent with an Act of Congress or the provisions or necessary implications of the Constitution", the legacy left to us by Mr. Justice Murphy in his dissenting opinion in *Pacific Coast Dairy v. Department of Agriculture*, 318 U. S. 285, 304, 305, 63 S. Ct. 628, 635, should be carefully considered and evaluated. He stated:

"We derive much of our strength as a nation from our dual system of federal government. To pro-

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*The dependence of the U. S. Department of Agriculture on state agencies in the doing of its own work, is well demonstrated in a pamphlet issued by that department entitled "*Questions and Answers on FEDERAL MILK MARKETING ORDERS*" (AMS-122), where in answer to the question "Does the Government provide any help in laying the groundwork before an order is issued by it?", the following answer is given:

"It is not ordinarily possible, or the Department of Agriculture to furnish personnel directly for the purpose of obtaining necessary background facts and information or for the purpose of drafting a proposed order for a new market. Within the limits of its personnel, the Department endeavors to furnish advice regarding the types and kinds of information which will be necessary and possible sources for securing it. It is also possible to furnish personnel for consultation with interested parties from time to time. Expert nongovernmental help to assist in laying the groundwork for a Federal order is generally necessary.

"Many Government agencies are able to contribute help in the preparation for a hearing. *State Departments of Agriculture, State extension and research workers, and Departments of Health* frequently provide information which is necessary background for order purposes. Persons interested in developing the necessary material should communicate with these agencies for whatever help or information they can furnish." (Italics added.)

note the harmonious working of that system the general clauses of the Constitution which broadly delineate the boundaries of state and national power should be construed by appraising the respective state and national interests involved and striking a balance which gives appropriate recognition to the legitimate concerns of each government. Since these boundaries are not absolutes, the question necessarily is one of reasonableness and degree. Cf. Holmes, J., dissenting in *Panhandle Oil Co. v. State of Miss. ex rel. Knox*, 277 U. S. 218, 222, 48 S. Ct. 451, 452, 72 L. Ed. 857, 56 A. L. R. 583, and again in *Springer v. Government of Philippine Islands*, 277 U. S. 189, 209, 210, 48 S. Ct. 480, 484, 485, 72 L. Ed. 845. This is the method which we have applied in testing state regulation of interstate commerce, and it should govern the construction of the exclusive legislation clause. If a state is acting in matters normally within its competence with which it is especially equipped to deal, to achieve important governmental ends such as the protection of the public health and welfare or the maintenance of orderly marketing conditions, the effects of its action should be allowed to extend into federal areas within its boundaries unless inconsistent with an act of Congress or the provisions or necessary implications of the Constitution. This formula allows the States to carry out important programs which must be of state-wide application to be effective and adequately recognizes the paramount character of federal power."

Appellee has not seriously disputed the numerous assertions in the various briefs filed in support of the position of appellants, concerning the losses, dangers and evils which have resulted and will continue to result from the decision of the lower court. The losses represented by the difference in prices following that decision, must necessarily be borne by someone. As a practical matter, if the losses are to be kept from the shoulders of appellee or of the personnel of our armed forces, there is no reason, legal, equitable or moral, why that burden should be shifted to the shoulders of a comparatively few dairy producers and distributors, rather than by taxation to the shoulders of the millions of Americans who are equally protected by such armed forces. If the members of our armed forces are not sufficiently compensated for their services or otherwise subsidized so that they can pay the same price for milk as others are required to pay then more direct means should be found to compensate them adequately.

Conclusion.

Twenty years have elapsed since the decisions in the *Penn Dairies* and *Pacific Coast Dairy* cases, by virtue of which the laws of one State were enforced and those of another nullified. In the interim, billions of dollars have been paid out by the Federal government to aid the farmer. In the light of this positive financial assistance, it is difficult to understand the theory on which appellee is contending that the Federal government should in this instance actually penalize the farmer by allowing and encouraging certain of its agencies to aid and abet the violation of state health and welfare laws.

For the reasons stated, the Court should reverse the judgments of the lower court, and should hold and declare that, in the absence of congressional action, no interference should be permitted by appellee's agencies which will prevent a state from enforcing its constitutional statute in a reasonable and non-discriminatory manner.

Dated: Paramount, California, August 21, 1962.

Respectfully submitted,

GEORGE E. ATKINSON, JR.,
Attorney for Amici Curiae.

APPENDIX A.

Federal Statute.

"*The Problem.*—In accordance with the provisions of the Act the Secretary of Agriculture, before promulgating Order No. 27, conducted public hearings attended by handlers, producers and consumers of milk and their representatives throughout the milkshed. No defendant, however, was represented. These hearings followed the presentation by the Agency to the Secretary and to the Commissioner of a proposed marketing agreement and order regulating the handling of milk in the New York marketing area with a request for action under the Federal and New York statutes. *The hearings were jointly held by the Federal and state governments.* The cooperation of the two governments was the culmination of a course of investigation and legislation which had continued over many years. The problem from the standpoint of New York was fully considered and the results set out in the *Report of 1933 of the Joint Legislative Committee to Investigate the Milk Industry.* This investigation was followed by the creation of the Milk Control Board with broad powers to regulate the dairy business of the state. This board had power to fix prices to be paid to producers and to be charged to consumers. A later New York act, the Boger-Allen Act, authorized the state commissioner to cooperate with the Federal authorities acting under the present Marketing Agreement Act, and to issue orders supplementary to those of the Federal Government *to be carried out under joint administration.*

"The problem concerned with the maintenance and distribution of an adequate supply of milk in metropoli-

tan centers are well understood by producers and handlers. In the milkshed and marketing area of metropolitan New York these problems are peculiarly acute. It is generally recognized that the chief cause of fluctuating prices and supplies is the existence of a normal surplus which is necessary to furnish an adequate amount for peak periods of consumption. This results in an excess of production during the troughs of demand. As milk is highly perishable, a fertile field for the growth of bacteria, and yet an essential item of diet, it is most desirable to have an adequate production under close sanitary supervision to meet the constantly varying needs. The sale of milk in metropolitan New York is ringed around with requirements of the health department to assure the purity of the supply. Only farms with equipment approved by the health authorities of the marketing area and operated in accordance with their requirements are permitted to market their milk. * * * Since all milk produced cannot find a ready market as fluid milk in flush periods, the surplus must move into cream, butter, cheese, milk powder and other more or less nonperishable products. Since these manufacturers are in competition with all similar dairy products, the prices for the milk absorbed into manufacturing processes must necessarily meet the competition of low-cost production areas far removed from the metropolitan centers. The market for fluid milk for use as a food beverage is the most profitable to the producer. Consequently, all producers strive for the fluid milk market. It is obvious that the marketing of fluid milk in New York has contracts at least with the entire national dairy industry. The approval of dairies by the Department of Health of New York City, as a condi-

tion for the sale of their fluid milk in the metropolitan area, isolates from this general competition a well recognized segment of the entire industry. Since these producers are numerous enough to keep up a volume of fluid milk for New York distribution beyond ordinary requirements, *cut-throat competition* even among them *would threaten the quality and in the end the quantity of fluid milk* deemed suitable for New York consumption. Students of the problem generally have apparently recognized a fair division among producers of the fluid milk market and utilization of the rest of the available supply in other dairy staples as an appropriate method of attack for its solution. Order No. 27 was an attempt to make effective such an arrangement under the authority of the Agricultural Marketing Agreement Act." (Italics added.)

United States v. Rock Royal Co-Op, 307 U. S. 548, 549, 550, 59 S. Ct. 1001, 1002.

APPENDIX B.

New York State Statute.

"The conscientious effort and thoroughness exhibited by the report lend weight to the (1933 New York Joint Legislative) committee's conclusions.

"In part those conclusions are:

"Milk is an essential item of diet. It cannot long be stored. It is an excellent medium for growth of bacteria. These facts necessitate safeguards in its production and handling for human consumption which greatly increase the cost of the business. Failure of producers to receive a reasonable return for their labor and investment over an extended period threaten a relaxation of vigilance against contamination.

"The production and distribution of milk is a paramount industry of the state, and largely affects the health and prosperity of its people. Dairying yields fully one-half of the total income from all farm products. Dairy farm investment amounts to approximately $1,000,000,000. Curtailment or destruction of the dairy industry would cause a serious economic loss to the people of the state.

"In addition to the general price decline, other causes for the low price of milk include a periodic increase in the number of cows and in milk production, the prevalence of unfair and destructive trade practices in the distribution of milk, leading to a demoralization of prices in the metropolitan area and other markets, and the failure of transportation and distribution charges to be reduced in proportion to the reduction in retail prices for milk and cream.

"The fluid milk industry is affected by factors of instability peculiar to itself which call for special methods of control. Under the best practicable adjustment of supply to demand the industry must carry a surplus of about 20 per cent., because milk, an essential food, must be available as demanded by consumers every day in the year, and demand and supply vary from day to day and according to the season; but milk is perishable and cannot be stored. Close adjustment of supply to demand is hindered by several factors difficult to control. Thus surplus milk presents a serious problem, as the prices which can be realized for it for other uses are much less than those obtainable for milk sold for consumption in fluid form or as cream. A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milkshed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor. The fact that the larger distributors find it necessary to carry large quantities of surplus milk, while the smaller distributors do not, leads to price-cutting and other forms of destructive competition. Smaller distributors, who take no responsibility for the surplus, by purchasing their milk at the blended prices (i.e., an average between the price paid the producer for milk for sale as fluid milk, and the lower surplus milk price paid by the large organizations) can undersell the larger distributors. Indulgence in this price-cutting often compels the larger dealer to cut the price to his own and the producer's detriment.

"Various remedies were suggested, amongst them united action by producers, the fixing of minimum prices

for milk and cream by state authority, and the imposition of certain graded taxes on milk dealers proportioned so as to equalize the cost of milk and cream to all dealers and so remove the cause of price-cutting.

"The legislature adopted chapter 158 as a method of correcting the evils, which the report of the committee showed could not be expected to right themselves though the ordinary play of the forces of supply and demand, owing to the peculiar and uncontrollable factors affecting the industry. The provisions of the statute are summarized in the margin." *Nebbia v. People of the State of New York*, 291 U. S. 502, 507, 508, 54 S. Ct. 505.